

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ANGELA WHITNEY and CODY  
WHITNEY, Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

MELISSA REESE,  
  
Respondent-Appellant,

and

JAMES REESE and JACK WHITNEY,  
  
Respondents.

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UNPUBLISHED  
April 20, 2001

No. 227886  
Midland Circuit Court  
Family Division  
LC No. 99-000506-NA

Before: Cavanagh, P.J., and Markey and Collins, JJ.

MEMORANDUM.

Respondent-appellant Melissa Reese (hereafter “respondent”) appeals as of right from the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g), (i) and (j); MSA 27.3178(598.19b)(3)(g), (i) and (j). We affirm.

The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent’s parental rights was clearly not in the children’s best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

We reject respondent’s claim that reversal is required because MCL 722.638; MSA 25.248(18), pursuant to which the initial petition was filed, is unconstitutional as being violative of the constitutional due process and equal protection guarantees. US Const, Am V, XIV; Const 1963, art 1, §§ 2, 17. Although respondent did not raise this issue in the trial court, this Court

may consider claims of constitutional error for the first time on appeal when the alleged error would have been decisive to the outcome. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

The constitutionality of a statute is a question of law which is reviewed de novo on appeal. *Citizens for Uniform Taxation v Northport Public School Dist*, 239 Mich App 284, 287; 608 NW2d 480 (2000). Statutes are presumed to be constitutional and must be construed as such unless it is clearly apparent that the statute is unconstitutional. *Mahaffey v Attorney General*, 222 Mich App 325, 344; 564 NW2d 104 (1997). The party asserting the constitutional challenge has the burden of proving the law's invalidity. *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392, 401; 522 NW2d 643 (1994).

Contrary to respondent's assertion, the statute does not mandate the filing of a petition in all circumstances where a parent's rights to another child have been terminated in the past. Rather, the statute directs such action only when "there is risk of harm to the child" currently in the respondent's care, the respondent is responsible for placing the child in a situation of "unreasonable risk of harm," and the respondent failed "to take reasonable steps to intervene to eliminate that risk." MCL 722.638; MSA 25.248(18); see also *In re A.H.*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 224385, issued 3/13/01). Accordingly, respondent has failed to rebut the presumption that MCL 722.638; MSA 25.248(18) is constitutional and further consideration of this unpreserved issue is not warranted.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Jane E. Markey  
/s/ Jeffrey G. Collins